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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,295	07/14/2003	Michael Lee	NKTZ 2 00061	6308
27885	7590	10/30/2006	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			BLAU, STEPHEN LUTHER	
			ART UNIT	PAPER NUMBER

3711

DATE MAILED: 10/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/619,295

Applicant(s)

LEE, MICHAEL

Examiner

Stephen L. Blau

Art Unit

3711

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 19 October 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 6, 7, 9, 10, 20, 22, 23, 26 and 27.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
STEPHEN BLAU  
PRIMARY EXAMINER

Continuation of 5. Applicant's reply has overcome the following rejection(s): The objection to claim 9 as well as the 35 U.S.C. 102(b) rejection to claim 9.

Continuation of 11. does NOT place the application in condition for allowance because: The argument that the motivation as taught by Elkins '242 would not be proper to combine with Elkins '558 is disagreed with. Both patents are from the same inventor and appear to be the exact head though each does not individually show the claimed structure. Combined they do for what they were used for. The argument that combining the teaching of Viollaz with Elkins '558/'242 would go against the teaching of '242 is disagreed with. The design of '242 alone without the filling already lowers the center of gravity. A lead filling is not required. '242 states that lead can be added. It is very popular to add a light weight foam elastomer into a hollow head due to the foam's vibrations absorption ability and its little impact on the weight distribution of a head. Since the cavity is in the lower portion of the head and not the very top portion foam filling will still add weight to the lower portion of the head. Never-the-less the foam will have little impact of changing the center of gravity due to the low density of foam. The argument that it is improper to combine Viollaz with the Elkins patents due to it would remove a sweep sole which adds weight to the rear of the sole is disagreed with. Viollaz shows a suitable alternative on how a sole of a muscle back can look. Both are substitutable designs with each having advantages as well as disadvantages. Not having a rear edge to possibly engage with the ground is an advantage. And having a thicker bottom sole wall for the cavity is another way to have weight at the sole of a head. The comment that the applicant could not find motivation to combine Viollaz or Elkins '242 with Elkins '558 is not understood. Paragraph 5 discloses motivational statements why it is of the opinion of the Examiner that one skilled in the art would make these modifications. Motivation does not have to be specifically stated in a reference. One skilled in the art brings experiences and knowledge which can provide the motivation to make a modification. The argument that it is improper to combine the references of Viollaz in view of Elkins '558 due to Viollaz shows a cavity centered with respect to a face is disagreed with. Viollaz shows a cavity higher than Elkins '558/'242. Clearly the combination of these patents shows that the cavity is able to be located at different places behind a face. One skilled in the art would not have been only locked into using the cavity location as taught by '558.